

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: WORLD TRADE CENTER DISASTER SITE
LITIGATION

21 MC 100 (AKH)

LAWRENCE HARVEY AND PATRICIA HARVEY,

06 Civ.

Plaintiff(s),

Hon. Alvin K. Hellerstein, U.S.D.J.

-against-

1 WORLD TRADE CENTER LLC, ET AL.,

NOTICE OF REMOVAL

Defendants.

PLEASE TAKE NOTICE that AMEC CONSTRUCTION MANAGEMENT, INC., BOVIS LEND LEASE LMB, INC., TULLY CONSTRUCTION CO., INC., AND TURNER CONSTRUCTION COMPANY (collectively "Defendants") hereby remove the above-entitled action (the "Action") from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1441, § 1442(a)(1), § 1446(a), § 1446(b) and the Air Transportation Safety and System Stabilization Act, Public Law No. 107-42, § 401 *et seq.*, 115 Stat. 230 (2001) (the "ATSSSA") (codified as amended at 49 U.S.C. §40101 (2001)).

In support of this Notice of Removal, Defendants state:

1. On or about October 27, 2006, Plaintiff(s) filed a Summons with Notice in the Supreme Court of the State of New York, County of New York. Plaintiff(s) assert claims resulting from, relating to, and arising out of the terrorist-related aircraft crashes of September 11, 2001. A true copy of the Summons with Notice is attached to this Notice of Removal.

2. On or about November 20, 2006, Defendants received the Summons with Notice in this Action bearing Index Number 115281/06.

3. Because these claims arise out of Plaintiff(s)' alleged injuries resulting from, relating to, and arising out of the September 11, 2001 terrorist-related aircraft crashes, the United States District Court for the Southern District of New York has original and exclusive jurisdiction over the Action. Specifically in response to the tragic events of September 11, 2001, Congress enacted the ATSSSA on September 22, 2001, which created a comprehensive scheme addressing numerous matters resulting from the attacks. Section 408(b) of the ATSSSA contains a broad jurisdictional provision centralizing in the Southern District of New York the resolution of any litigation claims resulting from or relating to the events of September 11, 2001:

The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought for any claim (including any claim for loss of property, personal injury, or death) resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001.

Pub. L. No. 107-42, § 408(b)(3), 115 Stat. 230, 241 (2001).

4. In addition, Section 408(b)(1) of the ATSSSA creates a federal cause of action over which this Court has original jurisdiction. It provides:

There shall exist a Federal cause of action for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 and 77, and United Airlines flights 93 and 175, on September 11, 2001. Notwithstanding section 40120(c) of title 49, United States Code, this cause of action shall be the exclusive remedy for damages arising out of the hijacking and subsequent crashes of such flights.

Pub. L. No. 107-42, § 408(b)(1), 115 Stat. 230, 240-241 (2001).

5. Furthermore, In *In re: WTC Disaster Site*, the United States Court of Appeals for the Second Circuit conclusively recognized the original and exclusive jurisdiction in the Southern

District of New York for claims relating to the terrorist-related aircraft crashes of September 11, 2001. *See In re: WTC Disaster Site*, 414 F.3d 352, 375–380 (2d Cir. 2005).

6. Based on the foregoing, the Action is removable from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1441.

7. The Action is also removable based upon 28 U.S.C. § 1442(a)(1). Section 1442(a)(1) provides:

(a) A civil action . . . commenced in a State court against any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office

8. Federal agencies and officers exercised control over particular health, safety and other issues relating to the rescue, recovery, cleanup, debris removal and/or construction efforts at the World Trade Center (“WTC”) site following the attacks on September 11, 2001.

9. Defendants complied with the directives of those federal agencies and officers in performing these activities at the WTC site, and therefore have at least a colorable federal immunity defense.

10. Moreover, because the federal agencies and officers exercised control over these issues, a causal nexus exists between the Plaintiff(s)’ claims and Defendants’ alleged activities.

11. Therefore, the Action is removable from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1442(a)(1).

12. Consent of all defendants to removal here is unnecessary as § 408(b)(1) of the

ATSSSA provides for original and exclusive jurisdiction in the Southern District of New York for claims relating to the terrorist-related aircraft crashes of September 11, 2001. Pub. L. No. 107-42, § 408(b)(3), 115 Stat. 230, 241 (2001); *Ackerman v. Nat'l. Property Analysts*, 1992 WL 84477 at *1 (S.D.N.Y. 1992). Consent of all defendants here is also unnecessary pursuant to § 1442(a)(1). *Bradford v. Harding*, 284 F.2d 307, 310 (2d Cir. 1960).

13. Defendants' Notice of Removal is timely as the Notice of Removal will be filed within thirty days of Defendants' receipt of the Summons with Notice. *See* 28 U.S.C. §1446(b).

14. A copy of this Notice of Removal will be filed with the Supreme Court of the State of New York, County of New York, and will be served on Plaintiff(s)' counsel pursuant to 28 U.S.C. § 1446(d).

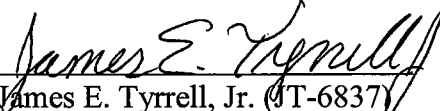
15. Pursuant to Rule 81.1(b) of the local civil rules for the Southern District of New York, Defendants will forward a copy of all records and proceedings in the Supreme Court of the State of New York, County of New York within 20 days.

16. Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Defendants hereby remove to this Court the action now pending against them in the Supreme Court of the State of New York, County of New York, bearing Index No. 115281/06.

Dated: Newark, New Jersey
December 8, 2006

PATTON BOGGS LLP

By: 
James E. Tyrrell, Jr. (JT-6837)
One Riverfront Plaza, 6th floor
Newark, NJ 07102
(973) 868-5600
JTyrrell@PattonBoggs.com

Attorneys for AMEC Construction Management, Inc.,
Bovis Lend Lease LMB, Inc., Tully Construction Co.,
Inc., and Turner Construction Company.

TO: Christopher R. LoPalo
Worby Groner Edelman &
Napoli Bern, LLP
115 Broadway, 12th Floor
New York, NY 10006

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NEW YORK
COUNTY CLERK'S OFFICE

OCT 17 2006

LAWRENCE HARVEY AND PATRICIA HARVEY,

SUMMONS WITH NOTICE
NOT COMPARED
WITH COPY FILED

Plaintiff(s),

-against-

Index No:

1 WORLD TRADE CENTER LLC, ET AL.
(SEE ATTACHED RIDER)

115281/06

Defendant(s).

To the above-named defendant(s):

You are hereby summoned and required to serve upon plaintiff's/plaintiffs' attorney, at the address stated below, a notice of appearance or demand for a complaint.

If this summons was personally delivered upon you in the State of New York, the answer must be served within twenty days after such service of the summons, excluding the date of service. If the summons was not personally delivered to you within the State of New York, the answer must be served within thirty days after service of the summons is complete as provided by law.

The nature of this action is to recover money damages and any other relief that the Court deems just and proper for exposure to toxic contaminants, including but not limited to: fumes, gasses, mists, vapors, dust, fibers, particles, substances, and/or radiation at or around the World Trade Center Site, Ground Zero, Fresh Kills Landfill, and/or in the area and buildings surrounding the World Trade Center Site following terrorist attacks on September 11, 2001. This exposure caused plaintiff's/plaintiffs' injuries, including but not limited to: acid reflux disease, asthma, Barrett's Esophagus, bronchial inflammation, bronchitis, bullous disease of the lungs, cancer, chemical pneumonitis, chronic bronchitis, chronic cough, chronic laryngitis, chronic pneumonia, chronic rhinitis, chronic sinusitis, chronic obstructive pulmonary disease (COPD), emphysema, gastroesophageal disease (GERD), hearing loss, laryngitis, malignant mesothelioma, nasal polyps, neurological problems, peritonsillar cellulitis, pharyngitis, pneumonia, polyps on the larynx, polyps on the throat, reactive airway dysfunction syndrome (RADS), rhinitis, sarcoidosis, silicosis, sinus polyps, sinusitis, ulcerative colitis, vocal chord dysfunction, and exacerbation of a prior existing condition or conditions.

Your action(s) and/or failure to act, constitutes carelessness, negligence and/or recklessness, and is the sole and proximate cause of plaintiff's/plaintiffs' toxic exposure, and resulting injuries, illnesses and damages.

Your failure and/or the failure of your agents, servants, representatives and/or employees to comply with, including but not limited to, the following: General Municipal Law of the State of New York §205-e and §205-a; the Occupational Safety and Health Act, 29 U.S.C. §§ 654 et seq.; Occupational Safety and Health Administration (OSHA) standards, including but not limited to, 29 C.F.R. §1910 Subparts H, I, J, K and Z, and specifically 29 C.F.R. §§1910.38, 1910.120, 1910.132-134, 1910.146,

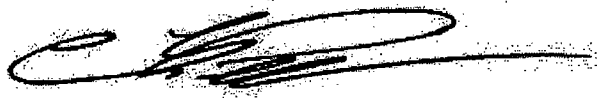


1910.156, 1910.1001, 1910.1025, 1910.1027, 1910.1000 and 1910.1200; 29 C.F.R. §1926 Subparts C, D, E, F, G, H, I, J and Z; The New York Industrial Code, including but not limited to: §§23-1.5, 23-1.7, 23-1.8, 23-1.9, 23-1.25, 23-1.26 and 23-2.1; New York State Labor Law, including but not limited to: §§200, 240, 241(6), Article 2, §27-a, Article 28; 12 N.Y.C.R.R. §820.4; and other applicable Federal, State and local rules, regulations, ordinances and statutes is the proximate cause of plaintiff's/plaintiffs' injuries, toxic exposure and resulting damages.

If you do not serve a notice of appearance or demand for a complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for a sum greater than the jurisdictional limits of all lower courts, with interest, and the costs and disbursements of this action.

The action will be heard in the Supreme Court of the State of New York, in and for the County of New York. The basis of venue is N.Y. C.P.L.R. §509.

Dated: New York, New York
October 2, 2006



Christopher R. LoPalo
Attorney for Plaintiff

WORBY GRONER EDELMAN & NAPOLI BERN, LLP
115 Broadway, 12th Floor
New York, New York 10006
(212) 267-3700



RIDER

LAWRENCE HARVEY AND PATRICIA HARVEY,

PLAINTIFFS,

- AGAINST -

1 WORLD TRADE CENTER LLC; 1 WTC HOLDINGS LLC; 2 WORLD TRADE CENTER LLC.; 2 WTC HOLDINGS LLC.; 4 WORLD TRADE CENTER LLC.; 4 WTC HOLDING LLC.; 5 WORLD TRADE CENTER LLC.; 5 WTC HOLDING LLC.; 7 WORLD TRADE COMPANY, L.P.; A RUSSO WRECKING, INC.; ABM INDUSTRIES, INC.; ABM JANITORIAL NORTHEAST, INC.; AMEC CONSTRUCTION MANAGEMENT, INC.; AMEC EARTH & ENVIRONMENTAL, INC.; ANTHONY CORTESE SPECIALIZED HAULING LLC.; ATLANTIC HEYDT CORP.; BECHTEL ASSOCIATES PROFESSIONAL CORPORATION; BECHTEL CONSTRUCTION, INC.; BECHTEL CORPORATION; BECHTEL ENVIRONMENTAL, INC.; BERKEL & COMPANY, CONTRACTORS, INC.; BIG APPLE WRECKING & CONSTRUCTION CORP.; BOVIS LEND LEASE LMB, INC.; BOVIS LEND LEASE, INC.; BREEZE CARTING CORP.; BREEZE NATIONAL INC.; BRER-FOUR TRANSPORTATION CORP.; BURO HAPPOLD CONSULTING ENGINEERS, P.C.; C.B. CONTRACTING CORP.; CANRON CONSTRUCTION CORP.; CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.; CORD CONTRACTING CO., INC.; CRAIG TEST BORING COMPANY INC.; DAKOTA DEMO-TECH; DIAMOND POINT EXCAVATING CORP.; DIEGO CONSTRUCTION, INC.; DIVERSIFIED CARTING, INC.; DMT ENTERPRISE, INC. D'ONOFRIO GENERAL CONTRACTORS CORP.; EAGLE LEASING & INDUSTRIAL SUPPLY, INC.; EAGLE ONE ROOFING CONTRACTORS INC.; EAGLE SCAFFOLDING CO., INC.; EJ DAVIES, INC.; EN-TECH CORP.; ET ENVIRONMENTAL; EVERGREEN RECYCLING OF CORONA(EROC); EWELL W. FINLEY, P.C.; EXECUTIVE MEDICAL SERVICES, P.C.; F&G MECHANICAL, INC.; FLEET TRUCKING, INC.; FRANCIS A. LEE EXTERIOR RESTORATION, INC.; FTI TRUCKING, INC.; GILSANZ, MURRAY, & STEFICEK, LLP, GOLDSTEIN ASSOCIATES CONSULTING ENGINEERS, PLLC.; HALLEN WELDING SERVICE, INC.; H.P. ENVIRONMENTAL; KOCH SKANSKA INC; LAQUILA CONSTRUCTION INC.; LASTRADA GENERAL CONTRACTING CORP.; LESLIE E. ROBERTSON ASSOCIATES CONSULTING ENGINEERS P.C.; LIBERTY MUTUAL GROUP; LOCKWOOD, KESSLER & BARTLETT, INC.; LUCIUS PITKIN, INC.; LZA TECH-DIV OF THORTON TOMASETTI; MANAFORT BROTHERS INCORPORATED; MAZZOCCHI WRECKING, INC.; MERIDIAN CONSTRUCTION CORP.; MORETRENCH AMERICAN CORP.; MRA ENGINEERING, PC; MUESER RUTLEDGE CONSULTING ENGINEERS, INC; NACIREMA INDUSTRIES INCORPORATED; NEW YORK CRANE & EQUIPMENT CORP.; NICHOLS ON CONSTRUCTION COMPANY; PETER SCALAMANDRE & SONS, INC.; PINNACLE ENVIRONMENTAL CORP.; PLAZA CONSTRUCTION CORP.; PRO SAFETY SERVICES LLC.; PT & L CONTRACTING CORP.; REGIONAL SCAFFOLDING & HOISTING CO., INC.; ROBER SILMAN ASSOCIATES; ROBERT L. GEROSA, INC.; RODAR ENTERPRISES, INC.; ROYAL GM, INC; SAB TRUCKING INC.; SAFEWAY ENVIRONMENTAL CORP.; SEASONS INDUSTRIAL CONTRACTING; SEMCOR EQUIPMENT & MANUFACTURING CORP.; SILVERITE CONTRACTING CORPORATION; SILVERSTEIN DEVELOPMENT CORP.; SILVERSTEIN PROPERTIES INC.; SILVERSTEIN PROPERTIES; SILVERSTEIN WTC FACILITY MANAGER LLC.; SILVERSTEIN WTC LLC; SILVERSTEIN WTC MGMT CO. LLC.; SILVERSTEIN WTC PROPERTIES LLC.; SILVERSTEIN WTC, LLC a/k/a SILVERSTEIN WTC PROPERTY; SIMPSON GUMPertz & HEGER INC.; SKIDMORE, OWING & MERRILL LLP; SURVIVAIR; TISHMAN CONSTRUCTION CORPORATION OF MANHATTAN; TISHMAN CONSTRUCTION CORPORATION OF NEW YORK; TISHMAN INTERIORS CORPORATION; TISHMAN SPEYER PROPERTIES; THORTON-TOMASETTI GROUP, INC.; TORRETTA TRUCKING, INC.; TOTAL SAFETY CONSULTING, L.L.C.; TUCCI EQUIPMENT RENTAL CORP.; TULLY CONSTRUCTION CO., INC.; TULLY CONSTRUCTION COMPANY; TULLY ENVIRONMENTAL INC.; TULLY INDUSTRIES, INC.; TURNER CONSTRUCTION CO.; TURNER CONSTRUCTION COMPANY; ULTIMATE DEMOLITION/CS HAULING (JOINT VENTURE); VERIZON NEW YORK INC; VOLLMER ASSOCIATES LLP; W HARRIS & SONS INC.; WEEKS MARINE, INC.; WEIDLINGER ASSOCIATES, CONSULTING ENGINEERS, P.C.; WHITNEY CONTRACTING INC.; WOLKOW-BRAKER ROOFING CORP.; WORLD TRADE CENTER PROPERTIES LLC.; WSP CANTOR SEINUK; YANNUZZI & SONS, INC; YONKERS CONTRACTING COMPANY, INC.; YORK HUNTER CONSTRUCTION, LLC; ZIEGENFUSS DRILLING, INC.,

DEFENDANTS.

X



Defendants' Addresses:

1 WORLD TRADE CENTER LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

1 WTC HOLDINGS LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

2 WORLD TRADE CENTER LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

2 WTC HOLDINGS LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

4 WORLD TRADE CENTER LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

4 WTC HOLDINGS LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

5 WORLD TRADE CENTER LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

5 WTC HOLDINGS LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

7 WORLD TRADE COMPANY, L.P.
Carb, Luria, Glassner, Cook & Kufeld
529 Fifth Avenue
New York, NY 10017
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

A RUSSO WRECKING
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

ABM INDUSTRIES, INC.
C/O JEFFERY SAMEL & PARTNERS
150 BROADWAY 20TH FLOOR
NEW YORK, NEW YORK 10038

ABM JANITORIAL NORTHEAST, INC.
C/O JEFFERY SAMEL & PARTNERS
150 BROADWAY 20TH FLOOR
NEW YORK, NEW YORK 10038

AMEC CONSTRUCTION
MANAGEMENT, INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

AMEC EARTH & ENVIRONMENTAL,
INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

D'ONOFRIO GENERAL
CONTRACTORS CORP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

DAKOTA DEMO-TECH
140 Old Northport Road
Kings Park, NY 11754

DIAMOND POINT EXCAVATING
CORP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

DIEGO CONSTRUCTION, INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

DIVERSIFIED CARTING, INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

DMT ENTERPRISE, INC.
255 Lake Avenue
Yonkers, NY 10701

EAGLE LEASING & INDUSTRIAL
SUPPLY
1726 FLATBUSH AVENUE
BROOKLYN, NY 11210

EAGLE ONE ROOFING
CONTRACTORS INC.,
18-60 45th Street
Astoria, NY 11105

EAGLE SCAFFOLDING CO, INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

EJ DAVIES, INC.,
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

EN-TECH CORP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

ET ENVIRONMENTAL
C/O CT CORPORATION SYSTEM
111 Eighth Avenue
New York, NY 10011

EVERGREEN RECYCLING OF
CORONA(EROC)
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

EWELL W. FINLEY, P.C.,
C/O Milber Makris Plousadis & Seiden,
LLP
3 Barker Avenue, 6th
White Plains, NY 10601

EXECUTIVE MEDICAL SERVICES,
P.C.,
C/O Patton Boggs, LLP

MERIDIAN CONSTRUCTION
CORP.
22-19 49th Street
Astoria, NY 11105

MORETRENCH AMERICAN
CORPORATION
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

MRA ENGINEERING P.C.,
600 Hempstead Turnpike
West Hempstead, NY 11552-
1036

MUESER RUTLEDGE
CONSULTING ENGINEERS
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

NACIREMA INDUSTRIES
INCORPORATED
211 West 5th Street
Bayonne, NJ 07002

NEW YORK CRANE &
EQUIPMENT CORP.
Brooklyn Navy Yard
Brooklyn, NY 11205

NICHOLSON
CONSTRUCTION COMPANY
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

PETER SCALAMANDRE &
SONS, INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

PINNACLE
ENVIRONMENTAL CORP
C/O Paul O'Brien
64-54 Maurice Avenue
Maspeth, NY 11378

PLAZA CONSTRUCTION
CORP.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

PRO SAFETY SERVICES,
LLC
Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

PT & L CONTRACTING
CORP
1 Kalisa Way Ste 301
Paramus, NJ 07652

REGIONAL SCAFFOLD &
HOISTING CO., INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

ROBER SILMAN
ASSOCIATES

SIMPSON GUMPERTZ & HEGER
INC
C/O NATIONAL REGISTERED
AGENTS, INC.,
41 Seyon Street
Building 1, Suite 500
Waltham, MA 02453

SKIDMORE OWINGS & MERRILL
LLP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

SURVIVAIR
3001 S SUSAN ST
SANTA ANA, CA 92704

TISHMAN CONSTRUCTION
CORPORATION OF MANHATTAN
C/O Cozen O'Connor
1 Newark Center, Suite 1900
Newark, NJ 07102

TISHMAN CONSTRUCTION
CORPORATION OF NEW YORK
C/O Cozen O'Connor
1 Newark Center, Suite 1900
Newark, NJ 07102

TISHMAN INTERIORS
CORPORATION
C/O Daniel R. Tishman
666 5th Avenue
New York, NY 10103

TISHMAN SPEYER PROPERTIES
C/O Daniel R. Tishman
666 5th Avenue
New York, NY 10103

THORTON-TOMASETTI GROUP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

TORRETTA TRUCKING, INC
120 MOUNTAINVIEW AVENUE
STATEN ISLAND, NY 10314

TOTAL SAFETY CONSULTING,
LLC
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

TUCCI EQUIPMENT RENTAL
CORP
Daneen Gazzola
3495 Rombouts Avenue
Bronx, NY 10475

TULLY CONSTRUCTION CO.,
INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

TULLY CONSTRUCTION
COMPANY
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

TULLY ENVIRONMENT, INC.



ANTHONY, CORTESE SPECIALIZED
HAULING LLC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

ATLANTIC HEYDT CORP
C/O FRENCH & RAFTER, LLP
29 BROADWAY 27TH FLOOR
NEW YORK, NY 10006

BECHTEL ASSOCIATES
PROFESSIONAL CORPORATION
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

BECHTEL CONSTRUCTION, INC.,
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

BECHTEL CORPORATION
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

BECHTEL ENVIRONMENTAL, INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

BERKEL & COMPANY,
CONTRACTORS, INC.,
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

BIG APPLE WRECKING &
CONSTRUCTION CORP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

BOVIS LEND LEASE LMB, INC.
C/O Mound Cotton Wollan & Greengrass
One Battery Park Plaza
New York, NY 10004

BOVIS LEND LEASE, INC.
C/O Mound Cotton Wollan & Greengrass
One Battery Park Plaza
New York, NY 10004

BREEZE CARTING CORP
31 Bay Street
Brooklyn, NY 11231

BREEZE NATIONAL, INC.,
31 Bay Street
Brooklyn, NY 11231

BRER-FOUR TRANSPORTATION
CORP.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

BURO HAPPOLD CONSULTING
ENGINEERS, P.C.,
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

C.B. CONTRACTING CORP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor

1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

F&G MECHANICAL, INC.,
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

FLEET TRUCKING, INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

FRANCIS A. LEE COMPANY, A
CORPORATION
35 Bethpage Road
Hicksville, NY 11801

FTI TRUCKING
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

GILSANZ MURRAY STEFICEK, LLP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

GOLDSTEIN ASSOCIATES
CONSULTING ENGINEERS, PLLC
31 West 27th Street
New York, NY 10001

HALLEN WELDING SERVICE, INC.
C/O Kaplan, Von Ohlen & Massamillo,
LLC
90 Park Avenue, 18th Floor
New York, NY 10016

HP ENVIRONMENTAL
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

KOCH SKANSKA INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

LAQUILA CONSTRUCTION INC
C/O Frederick N. Levine, P.E.
305 Broadway, Suite 500
New York, NY 10007

LASTRADA GENERAL
CONTRACTING CORP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

LESLIE E. ROBERTSON
ASSOCIATES CONSULTING
ENGINEER P.C.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

LIBERTY MUTUAL GROUP
C/O CT CORPORATION SYSTEM
111 Eighth Avenue
New York, NY 10011

LOCKWOOD KESSLER &
BARTLETT, INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

ROBERT L GEROSA, INC
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

RODAR ENTERPRISES, INC
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

ROYAL GM INC.,
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

SAB TRUCKING INC.
C/O SAVERIO ANASTASIO
7 Pironi Court
Woodbury, NY 11797

SAFEWAY
ENVIRONMENTAL CORP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

SEASONS INDUSTRIAL
CONTRACTING,
266 GREEN VALLEY RD
STATEN ISLAND, NY 10312

SEMCOR EQUIPMENT &
MANUFACTURING CORP.
18 Madison Street
Keyport, NJ 07735

SILVERITE CONTRACTING
CORPORATION
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

SILVERSTEIN
DEVELOPMENT CORP.
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

SILVERSTEIN PROPERTIES,
INC.
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

SILVERSTEIN PROPERTIES
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

SILVERSTEIN WTC
FACILITY MANAGER LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

SILVERSTEIN WTC LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

SILVERSTEIN WTC MGMT
CO LLC
C/O Edward Tanenhouse, Esq.

C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

TULLY INDUSTRIES, INC.,
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

TURNER CONSTRUCTION CO.
C/O London Fischer, LLP
59 Maiden Lane
New York, NY 10038

TURNER CONSTRUCTION
COMPANY
C/O London Fischer, LLP
59 Maiden Lane
New York, NY 10038

ULTIMATE DEMOLITIONS/CS
HAULING
500 New Street
Oceanside, NY 11572

VERIZON NEW YORK, INC.
C/O CT CORPORATION SYSTEM
111 Eighth Avenue
New York, NY 10011

VOLLMER ASSOCIATES LLP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

W HARRIS & SONS INC
37 West Washington Avenue
Pearl River, NY 10965

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C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

WEIDLINGER ASSOCIATES,
CONSULTING ENGINEERS, P.C.,
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

WHITNEY CONTRACTING INC.
C/O Joanne Pisano, P.C.
1250 Central Park Avenue
Yonkers, NY 10704

WOLKOW-BRAKER ROOFING
CORP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

WORLD TRADE CENTER
PROPERTIES LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

WSP CANTOR SEINUK GROUP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

YANNUZZI & SONS INC
56 Oakwood Avenue
Orange, NJ 07050

YONKERS CONTRACTING



Newark, NJ 07102

CANRON CONSTRUCTION CORP
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.,
4 Irving Place
New York, New York 10003

CORD CONTRACTING CO., INC
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

CRAIG TEST BORING COMPANY INC.
PO Box 427
Mays Landing, NJ 08330

LUCIUS PITKIN, INC
C/O Stein and Stein
666 Old Country Road
Garden City, NY 11530

LZA TECH-DIV OF THORTON
TOMASETTI
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

MANAFORT BROTHERS, INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

MAZZOCCHI WRECKING, INC.
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

7 World Trade Center 38th Floor
New York, NY 10048

SILVERSTEIN WTC
PROPERTIES LLC
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

SILVERSTEIN WTC, LLC
a/k/a SILVERSTEIN WTC
PROPERTY
C/O Edward Tanenhouse, Esq.
7 World Trade Center 38th Floor
New York, NY 10048

COMPANY, INC.,
C/O Patton Boggs, LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

YORK HUNTER CONSTRUCTION,
LLC
107 Old Goshen Road
South Seaville, NJ 08246

ZIGENFUSS DRILLING, INC.,
C/O CT CORPORATION SYSTEM
111 Eighth Avenue
New York, NY 10011



ATTORNEY VERIFICATION

CHRISTOPHER R. LOPALO, an attorney at law, duly admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury that:

He is the attorney for the plaintiff(s) in the above-entitled action. That he has read the foregoing SUMMONS WITH NOTICE and knows the contents thereof, and upon information and belief, deponent believes the matters alleged therein to be true.

The reason this Verification is made by deponent and not by the plaintiff(s) is that the plaintiff(s) herein reside(s) in a county other than the one in which the plaintiff's attorneys maintain their office.

The source of deponent's information and the grounds of his belief are communication, papers, reports and investigation contained in the file.

DATED: New York, New York
October 2, 2006



CHRISTOPHER R. LOPALO, Esq.



Index No:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LAWRENCE HARVEY (AND WIFE, PATRICIA HARVEY),

Plaintiff(s)

- against -

1 WORLD TRADE CENTER LLC, ET. AL.,

Defendant(s).

SUMMONS WITH NOTICE

WORBY GRONER EDELMAN & NAPOLI BERN, LLP

Attorneys for: Plaintiff(s)

Office and Post Office Address, Telephone

115 Broadway - 12th Floor

New York, New York 10006

(212) 267-3700

To
Attorney(s) for

Service of a copy of the within
is hereby admitted.

Dated,

Attorney(s) for

PLEASE TAKE NOTICE:

☐ **NOTICE OF ENTRY**

that the within is a (certified) true copy of an

duly entered in the office of the clerk of the within named court on 20

☐ **NOTICE OF SETTLEMENT**

that an order _____ of which the within is a true copy
will be presented for settlement to the HON. _____ one of the

judges of the

within named Court, at

on 20 at _____ M.

Dated,

Yours, etc.,

WORBY GRONER EDELMAN & NAPOLI BERN, LLP

